IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 615 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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THAKOR LAXMANJI CHELAJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 615 of 1992

MR J.S.UNWALA for MR PK JANI for the Petitioner

MR P.R.ABHICHANDANI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/08/2002

ORAL JUDGEMENT

The present appeal arises out of a judgement and order rendered by the Special Judge, Mehsana in Essential Commodities Case No. 9 of 1988 convicting the appellant

under Section 3 of the Essential Commodities Act and sentencing him to undergo simple imprisonment for a period of 3 months and to pay fine of Rs.500/-. In default, to undergo further simple imprisonment for a period of 15 days. The judgement was rendered on June 23, 1992. The appellant was on bail during the trial and was ordered to be continued on bail by an order of this Court dated 22nd July 1992 while admitting the appeal.

2. The prosecution alleged several irregularities and illegalities committed by the appellant and laid evidence in this regard. The Trial Court, after considering the evidence found that the charges have been proved by the prosecution, and thus, recorded the conviction under Sections 7 & 3 of the Essential Commodities Act.

3. Learned Advocate Mr.J.S.Unwala appearing for Mr. P.K.Jani for the appellant has indicated that the offences for which the appellant has been convicted are by and large technical in nature. He, however, candidly stated that he does not propose to go into the merits of the conviction but would submit that benefit of probation may be given to the appellant. He submitted that on earlier occasion also when the matter came up for final hearing he had made similar submission, and a report of the Chief Probationer Officer, Mehsana under the Probation of Offenders Act was called for by this Court. He submitted that benefit of probation may be granted to the appellant. According to Mr. Unwala, the appellant is aged person and less educated. He had a large family to maintain excepting a small piece of land. He had no other source of income. In fact, he is able to maintain his family only with the help of his wife. He has committed these mistakes because of lack of education and there was no mens rea behind this. He may be given an opportunity to improve. In fact he has been repenting for his involvement in these mistakes.

4. Learned APP Mr. P.R.Abhichandani submitted that the Court below has recorded conviction after considering the evidence. However, if the report of the Probation Officer is favourable, appropriate orders may be passed.

5. The report of the Chief Probationer Officer, Mehsana is before this Court. Court has gone through the report. It has now been shown to learned APP also. The report indicates that appellant is the only bread earner in the family. He has a large family to maintain and his wife helps him in maintenance of the family by maintaining 3 buffalo. The only source of income is a

small piece of land for the appellant. He has taken education only up to standard II. It appears that he was involved in prosecutions earlier, but those cases have come to an end. He was externed for some time ,which order of externment was challenged in Appeal, and the Appeal was accepted by the appellate authority. In one of the cases, investigating agency has sought summary 'B'. The report of the Probationer Officer indicates that criminal cases were outcome of the dispute regarding land. The opinion of the Chief Probationer Officer is that the chances of the appellant's improvement are bright. His social and economic condition is very backward, and considering overall circumstances, the appellant may be given benefit of provision of Sections 4(1) and 4(3) of the Probation of Offenders Act.

6. Having regard to the submissions made by both the side, this appears to be good case where the benefit of probation may be given to the appellant. The report of the Probationer Officer is supported by an admission made by witness Dholaji Kachraji, Exhibit-29 that he had some disputes with the appellant for quite sometime.

7. This Court is inclined to accept the report of the Chief Probationer Officer and to give benefit of Section 4(1) of the Probation of Offenders Act to the appellant. It is directed that the appellant shall execute a bond of good conduct for Rs.5000/- for a period of two years with a surety of like amount to the satisfaction of the Trial Court and to appear and receive the sentence when called upon.

8. The appeal, therefore, stands partly allowed to the extent that the conviction and sentence is confirmed, the appellant is given benefit of probation under Section 4 of Probation of Offenders Act. Appeal stands disposed of accordingly.

(A.L.Dave,J)

Jayanti*